IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5068 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHMADKHAN SAHEBKHAN BIHAR

Versus

P D VAGHELA

Appearance:

MS KUSUM M SHAH for Petitioner

MR SJ DAVE, AGP for respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/07/2000

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 4-5-2000 passed by the District Magistrate, Banaskantha at Palanpur and he has been declared as dangerous person.

2. It is a settled principles of law that in order to bring a person within the expression " dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-social Activities Act, 1985, (for short " the Act of 1985 "), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2 (c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression " public order". A distinction has to be drawn between the " law and order " and " maintenance of public order ". A reference may be made of M.J.Shaikh v. M.M.Mehta, Comissioner of Police & Ors. reported in 1995 (2) GLR 1268.

3. Learned counsel for the petitioner has restricted her arguments only on the point that there is delay in deciding the representation. Learned counsel for the petitioner has argued that son of the petitioner sent representation on 9-5-2000 and the same has been received by the authority and the authority sent communication to the petitioner on 26-6-2000 stating that the representation made by the son of the petitioner has been disposed of on 16-6-2000. Therefore, there is delay of more than one month in deciding the representation for which learned counsel for the petitioner has relied upon a decision reported in AIR 1999 SC 884 Rajanmal v. State of Tamil Nadu and another ,wherein it is held as under ;

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. "

4. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 4-5-2000 passed against the detenu is hereby quashed.

The petitioner-detenu Mahmadkhan Sahebkhan Bihari is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.Dholakia, J.)

*mithabhai